

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1483 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

- =====
1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

SOHANLAL HIRJIJI RAYAKA (RABARI)

Versus

COMMISSIONER OF POLICE

Appearance:

MS DR KACHHAVAH for Petitioner
MR KT DAVE, AGP, for respondents.

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 25/04/2000

ORAL JUDGEMENT

1. Commissioner of Police, Rajkot City, Rajkot, passed an order on October 15, 1999, in exercise of powers under Section 3(1) of the Gujarat Prevention of Anti-Social Activities Act, 1985 ("PASA Act" for short), detaining the petitioner-Sohanlal Harjiji Rayaka (Rabari) under the provisions of the said Act.

2. The detaining authority took into consideration one offence registered against the petitioner under the Bombay Prohibition Act. The detaining authority considered the activities of the detenu as that of a bootlegger as defined under the PASA Act and observed that the petitioner is required to be immediately prevented from pursuing his activities, which are detrimental to public order. The authority also considered the possibility of resorting to less drastic remedies and came to conclusion that detention under PASA Act is the only remedy that can be resorted to.

3. The petitioner challenges the order of detention on various grounds. Ms. Kachhavah, learned advocate appearing for the petitioner, has restricted her arguments to the ground that when the order was passed, the detenu was in judicial custody. No compelling reasons are shown to pass the order of detention when the detenu was in judicial custody and had not even moved an application for bail. She placed reliance on the decision in the case of Sanjeevkumar Aggarwal v. Union of India, AIR 1990 SC 1202.

4. Mr. K.T. Dave, learned Assistant Government Pleader, has opposed this petition.

5. Considering rival side contentions, it appears that there is only one case registered against the detenu. There is no other material to support the observation of the detaining authority that the petitioner is a bootlegger. When the order was passed, the detenu was in judicial custody. There is nothing to indicate that there was an application moved by the detenu for being enlarged on bail. Barring one registered offence, there are no antecedents. The detaining authority has not recorded any compelling reasons for passing this order while the detenu was in judicial custody. The order is, therefore, rendered bad in law in view of the decision in the case of Sanjeevkumar Aggarwal (supra). The petition deserves to be allowed on this count alone.

6. In the result, the petition is allowed. The impugned order of detention dated October 15, 1999, passed against the detenu is hereby quashed. The detenu-Sohanlal Harjiji Rayaka (Rabari) is ordered to be set at liberty forthwith, if not required in any other matter. Rule is made absolute with no orders as to costs.

[A.L. DAVE, J.]

gt